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**UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY**

NEW YORK SHIPPING ASSOCIATION,
INC. and INTERNATIONAL
LONGSHOREMEN'S ASSOCIATION,
AFL-CIO,

Plaintiffs,

v.

SIMSMETAL EAST, LLC,

Defendant.

Civil Action No.

**COMPLAINT TO CONFIRM
ARBITRATION AWARD**

Plaintiffs International Longshoremen's Association, AFL-CIO ("ILA") and New York Shipping Association, Inc. ("NYSA"), by and through their respective attorneys, Marrinan & Mazzola Mardon, P.C., and The Lambos Firm, LLP, as and for their complaint, respectfully allege as follows:

JURISDICTION AND VENUE

1. As a first cause of action Plaintiffs seek to confirm and enforce an arbitration award issued pursuant to the authority of a collective bargaining agreement between NYSA and ILA to which Defendant Simsmetal East, LLC ("Simsmetal") is a party. This Court has subject-matter jurisdiction to hear this claim pursuant to Section 301 of the Labor Management Relations Act ("LMRA"), 29 U.S.C. § 185.

2. This Court is one of proper venue pursuant to Section 301(a) and (c) of the LMRA, 29 U.S.C. § 185(a) and (c), since the ILA's duly authorized officers or agents are engaged in representing or acting for employee members in this district. In addition, the relevant arbitration took place within this district, and the underlying grievances involve work performed in this district.

PARTIES

3. Plaintiff NYSA is a not-for-profit membership corporation organized and existing under the laws of the State of New York, with its principal office located at 333 Thornall Street, Suite 3A, Edison, New Jersey 08837. NYSA is a multiemployer collective-bargaining representative for its members, which are comprised of steamship carriers, stevedores, and other employers of waterfront labor. NYSA negotiates, enters into, and administers on behalf of its members collective bargaining agreements in the Port of New York and New Jersey ("Port").

4. Plaintiff ILA is an unincorporated association and labor organization within the purview of Section 2(5) of the LMRA, 29 U.S.C. § 152(5), which represents employees in an industry affecting commerce. Its principal office is located at 5000 West Side Avenue, North Bergen, New Jersey 07047. The ILA is the exclusive collective-bargaining representative certified by the National Labor Relations Board for all longshoremen and other waterfront workers employed by the members of NYSA. The ILA, on behalf of its affiliated locals, negotiates, enters into, and administers collective bargaining agreements with NYSA. The NYSA-ILA Collective Bargaining Agreement ("NYSA-ILA CBA") prescribes the terms and conditions of employment for longshore employees in the Port.

5. Upon information and belief, Defendant Simsmetal East, LLC, at all times material hereto was and is a company engaged in the business of stevedoring ships and in the transportation of goods by sea in foreign commerce to and from ports in the United States, including the Port of New York and New Jersey. Simsmetal does business under the name "Sims Metal Management" and maintains an office at Jersey Avenue, Jersey City, New Jersey 07302. Simsmetal at all times material hereto was an employer of longshore workers who are members of the ILA. At all times material hereto, Simsmetal was a member of NYSA and, hence, a party to the current NYSA-ILA CBA.

COUNT I

CONFIRMATION OF ARBITRATION AWARD

6. Plaintiffs repeat and reallege each of the allegations set forth in Paragraphs 1 through 5 above and incorporate same as if fully set forth herein.

7. Under the terms of the NYSA-ILA CBA any grievance, dispute, complaint, or claim arising out of or relating to the Agreement is required to be resolved in accordance with its Grievance and Arbitration provisions. Under those provisions, the "NYSA-ILA Labor Relations Committee" ("LRC"), which consists of representatives of management and the union, has full authority to rule on any grievance. In the absence of a deadlocked vote of the LRC, any determination of the LRC is final and binding and constitutes an enforceable arbitration award. The Grievance and Arbitration provisions of the NYSA-ILA CBA are attached as Exhibit 1.

8. From September 2013 through May 2014, ILA Local 1235 filed thirty-eight grievances alleging that Simsmetal was in violation of Article II, Section 2(A) of

the NYSA-ILA CBA (the “no subcontracting” clause) because an affiliated entity in Port Newark, New Jersey, that also operates under the name Sims Metal Management was refusing to hire ILA labor for loading and unloading bulk and breakbulk cargo. The no-subcontracting clause of the NYSA-ILA CBA is attached as Exhibit 2.

9. A Notice of Hearing dated May 30, 2014, was sent by certified mail, return-receipt requested, advising Simsmetal that Local 1235 had grieved Simsmetal’s alleged failure to use ILA labor to perform work at the Port Newark facility and notifying Simsmetal that the LRC would hold a hearing on these grievances on June 4, 2014.

10. On June 4, 2014, a hearing was held before the members of the Labor Relations Committee at the offices of NYSA, located at 333 Thornall Street, Suite 3A, Edison, New Jersey 08837. Simsmetal had been given notice of the hearing but advised the LRC’s counsel that it would not attend. The hearing proceeded in Simsmetal’s absence.

11. After due consideration of all the evidence presented at the hearing, the members of the Labor Relations Committee arrived at a unanimous decision and issued a final and binding Report and Award. That Report and Award ruled that Simsmetal was acting as a single employer with its corporate affiliate, and, as a result, Simsmetal was in violation of the NYSA-ILA CBA for its failure to use ILA labor at its location in Port Newark. The Report and Award ordered Simsmetal to cease violating the NYSA-ILA CBA, to begin hiring ILA labor, and to pay damages for its past contractual violations.

12. On or about June 30, 2014, Simsmetal was duly served with a copy of the Report and Award. A copy of the cover letter and the Report and Award that were sent

to Simsmetal are attached hereto as Exhibit 3. Simsmetal has failed to satisfy any part of the Report and Award.

13. Plaintiffs are entitled to an order of this Court confirming and fully enforcing the terms and conditions of the Report and Award against Simsmetal.

14. The Report and Award has not been vacated or modified, and no other petition to confirm the Report and Award has been presented to this or any other court.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs respectfully request that this Court issue an order and judgment as follows:

(a) Confirming and enforcing the Report and Award issued on June 30, 2014, by the Labor Relations Committee;

(b) Ordering and Adjudging that Defendant is liable for money damages in the amount of \$25,600 to be paid as directed by the Report and Award, together with attorney's fees and costs of this action; and

(c) Granting Plaintiffs such other and further relief as this Court may deem just and proper.

Dated: July 24, 2014

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